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Via Email: [wrobinso@idem.in.gov](mailto:wrobinso@idem.in.gov)

William Robinson, Wetland Project Manager  
Indiana Department of Environmental Management  
Office of Water Quality, Wetlands and Stormwater Section

**RE: Public Comments of the Hoosier Environmental Council on the Isolated  
Wetland Individual Permit Application, IDEM ID # 2023-28-49-WLR-X**

Mr. Robinson,

Please accept these brief public comments on behalf of the Hoosier Environmental Council (“HEC”) regarding the application for a State Isolated Wetland Individual Permit (“Permit”) submitted by Mark Alan Bridwell of D.R. Horton (“Applicant”) as part of its proposal to impact 2.7 acres of wetlands and 2,059 linear feet of stream to construct a residential subdivision and associated infrastructure.

**Introduction**

Founded in 1983 as an Indiana not-for-profit organization, HEC works for a healthy environment and sustainable economy for our state. One of HEC’s core environmental initiatives is to track regulatory permits in the White River watershed to promote the responsible development of wetlands and streams.<sup>1</sup> The Permit will permanently impact headwater streams and wetlands (“headwaters”) of Quack Branch. Quack Branch is a small tributary that flows into Goose Creek, which flows into the White River. Therefore, the Permit is of interest to HEC.

**Concerns**

***1. The Applicant failed to demonstrate that wetland activity is without reasonable alternative.***

HEC is concerned that the Applicant has not accurately considered practical alternatives to wetland activity. Specifically, state law requires applicants to “*demonstrate*, as a prerequisite to the issuance of the permit, that wetland activity *is without reasonable alternative.*” IC 13-18-

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<sup>1</sup> This program work is funded by the Nina Mason Pulliam Charitable Grant, and it is part of a regional initiative to reduce pollution, improve wildlife habitat, and increase awareness of the White River. <https://www.ninapulliamtrust.org/programs/environmental-initiatives/>.

22-5 (a)(1)(A). The Applicant failed to demonstrate that wetland activity is without reasonable alternative, as further detailed below.

When analyzing the alternatives to wetland impacts, the Applicant considers the following: total avoidance of all wetlands requiring no action (“Alternative 1”), locating to another property (“Alternative 2”), full development of the site and impacting all on-site wetlands (“Alternative 3”), and the submitted minimized development plan (“Alternative 4”).<sup>2</sup>

Alternative 1 considers the total avoidance of all wetlands and streams on-site, resulting in no wetland and stream impacts. This alternative is deemed “not practical due to requirements and limitations listed above, which make it necessary to balance out a required number of housing units to provide the necessary tax base required to accommodate the essential municipal services of fire, police, roads, parks, other public works, etc.”<sup>3</sup> In this alternative, the Applicant concludes that all wetlands cannot be avoided because of limitations including a “required number of housing units,” but fails to provide the number of housing units needed to support the “necessary tax base.” In other words, the Applicant does not *demonstrate* that the total avoidance of on-site wetlands and streams is *not* a reasonable alternative because they do not provide any alternative development plans or data. They merely conclude that the total avoidance of all wetlands and streams is not feasible.

Alternative 2, described as locating the project to another property, is outside of the scope of IC 13-18-22-5, which requires the Applicant to demonstrate that wetland activity “*is without reasonable alternative...to achieve a legitimate use...on the property on which the wetland is located.*” IC 13-18-22-5 (a)(1)(A). Alternative 2 speculates locating the development to another property on which the wetlands are not located. Thus, this is not an alternative to impacting wetlands *on the property*, and therefore, does not apply as a reasonable alternative. Like Alternative 1, Alternative 2 fails to provide evidence demonstrating that wetland activity is without reasonable alternative, in this case, *on the property*.

In Alternative 3, the Applicant considers impacting all on-site wetlands, and concludes that impacting all wetlands is not practical because they understand the need to minimize wetland and stream impacts.<sup>4</sup> How is impacting all wetlands and streams considered a thoughtful alternative to only impacting a portion of wetlands and streams? This alternative is counterintuitive. The worst-case scenario is not a practical consideration.

Alternative 4 is the minimized development plan and the only alternative that appears to be thoughtfully considered. Alternative 4 provided engineering drawings and a comprehensive plan that clearly shows wetland impacts. But because Alternatives 1-3 failed to demonstrate planning, metrics, or any consideration further than speculation, Alternative 4 becomes the only reasonable alternative. This alternative emerges more as the “only option” rather than an “alternative” to wetland and stream impacts. HEC is concerned that the Applicant settled on

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<sup>2</sup> Pages 27-28, Isolated Wetland Permit Application.

<sup>3</sup> Page 27, Isolated Wetland Permit Application.

<sup>4</sup> Page 28, Isolated Wetland Permit Application.

Alternative 4, the minimized development plan, before analyzing practical alternatives, and thus did not accurately demonstrate that wetland activity is without reasonable alternative, as required by IC 13-18-22-5. For these reasons, HEC respectfully requests that the Applicant submit an alternative analysis that thoughtfully and accurately demonstrates that wetland activity “is without reasonable alternative...to achieve a legitimate use proposed by the applicant on the property on which the wetland is located.” IC 13-18-22-5 (a)(1)(A).

**2. *The Applicant failed to thoughtfully consider the reasonable alternative of avoiding the headwater wetlands and streams completely and utilizing them for stormwater management.***

The Permit will permanently impact headwater wetlands and streams, which are environmentally significant areas within a watershed. They make up at least 80 percent of the stream network in the United States and serve as the life source for rivers.<sup>5</sup> When kept in their natural state, headwaters perform a variety of watershed services including flood control, groundwater recharge, pollutant removal, and nutrient cycling. They also improve the biodiversity of aquatic ecosystems by providing critical habitat for wildlife. Their ability to perform these vital functions is often overlooked because they are smaller in size, dry up seasonally, and can appear to be “low quality,” which also makes them an easy target for development.<sup>6</sup> That is the case here.

The Applicant states that the “majority of the wetland and stream impacts are located in the ephemeral channels and *low-quality emergent wetlands* of predominantly *non-native* cattail colonies in the north half of the site.”<sup>7</sup> This statement is inaccurate. The cattail species that was found in the emergent wetlands was identified as Broadleaf cattail (*Typha latifolia*), a native species of cattail.<sup>8</sup> The statement also fails to consider the hydrological significance of the ephemeral channels and emergent wetlands in the north half of the site. Further, according to the wetland delineation report, native trees such as white willow (*Salix alba*) and silky dogwood (*Cornus amomum*) were identified in the northern portion.<sup>9</sup> It would be reasonable to conclude that the wetlands and streams in the northern portion of the site are not *low quality*. Because these headwaters are environmentally significant and appear to be at least of moderate quality, it seems appropriate that the Applicant consider complete avoidance as a reasonable alternative under IC 13-18-22-5.

As previously mentioned, Alternative 1 considered completely avoiding these headwater wetlands and streams, but it failed to *demonstrate* that this was *not* a reasonable alternative because the Applicant provided no alternative development plans or data. If the Applicant has a valid reason for not being able to avoid these wetlands, it needs to be *demonstrated* beyond

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<sup>5</sup> Meyer at al. Where Rivers are Born: The Scientific Imperative for Defending Small Streams and Wetlands, accessible at <https://dep.wv.gov/WWE/getinvolved/sos/Documents/More/WhereRiversAreBorn.pdf>.

<sup>6</sup> Meyer at al. Where Rivers are Born: The Scientific Imperative for Defending Small Streams and Wetlands.

<sup>7</sup> Page 28, Isolated Wetland Permit Application.

<sup>8</sup> Page 87, Isolated Wetland Permit Application; USDA Plants Database, accessible at <https://plants.usda.gov/home/plantProfile?symbol=TYLA>.

<sup>9</sup> Page 120, Isolated Wetland Permit Application.

statements. For example, developers applying for a State Isolated Wetland Permit to impact wetlands *demonstrated* that they considered total avoidance of wetlands by *submitting engineering drawings of multiple layouts* and providing an actual analysis as to why certain layouts were more feasible than others.<sup>10</sup>

The proposed use of the property and overall need to impact wetlands and streams is to “create a new single family residential subdivision.”<sup>11</sup> In support of this need, the Applicant states that there is a demand for housing in the county, and that “numerous other subdivisions are being developed in accordance with the Indianapolis Comprehensive Land Development Plan.”<sup>12</sup> In multiple instances, the Comprehensive Plan for Marion County (“Plan”) encourages the protection of wetlands and streams and recognizes the benefits that can be realized if they are protected. The Plan recommends that “where possible, the natural states of our streams and other waterways should be maintained. Protecting the natural functions of our waterways will help to manage stormwater while also contributing to a richer ecology.”<sup>13</sup> The Plan also states that “naturalized areas such as [wetlands and naturalized stream corridors] have many benefits to the environmental health of Marion County. They can reduce flooding, provide natural habitat for wildlife, shade neighborhoods, repair soil, and improve air quality.”<sup>14</sup> Since the Applicant is developing the subdivision in accordance with the Plan, it seems important to note that the Plan is *protective of* and *encourages* wetland and stream preservation. The Plan makes clear that natural wetlands and streams can help to manage stormwater. This further supports the conclusion that completely avoiding these wetlands and streams should have been *thoughtfully* considered as a reasonable alternative.

It is important to address the significance of these headwaters and the planning recommendations that encourage wetland and stream protection. What prevented the Applicant from building around these natural features? These considerations should have been addressed when the Applicant went through the process of *demonstrating* that wetland activity “is without reasonable alternative...to achieve a legitimate use proposed by the applicant on the property on which the wetland is located.” IC 13-18-22-5 (a)(1)(A). Instead, the Applicant failed to thoughtfully consider the reasonable alternative of avoiding the headwater wetlands and streams completely and utilizing them for stormwater management.

**3. *Indiana’s wetland mitigation program is not effectively replacing wetlands needed to offset wetland losses and should be utilized as a last resort.***

The Department of Natural Resources (DNR) implements the Indiana Stream and Wetland Mitigation Program (IN SWMP), also called in In-Lieu Fee (ILF) program, which allows the DNR to sell stream and wetland mitigation credits to be used as compensatory

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<sup>10</sup> Memorandum, accessible at [https://www.hecweb.org/wp-content/uploads/2021/08/20210714\\_V3\\_FedEx\\_Comment-Response\\_FINAL.pdf](https://www.hecweb.org/wp-content/uploads/2021/08/20210714_V3_FedEx_Comment-Response_FINAL.pdf).

<sup>11</sup> Page 27, Isolated Wetland Permit Application.

<sup>12</sup> Page 27, Isolated Wetland Permit Application.

<sup>13</sup> Page 110, Comprehensive Plan for Marion County (Land Use Component), accessible at <https://citybase-cms-prod.s3.amazonaws.com/d55349b00251489ea6744d4a06826f95.pdf>.

<sup>14</sup> Page 110, Comprehensive Plan for Marion County (Land Use Component).

mitigation for unavoidable impacts to comply with provisions under the Clean Water Act and Indiana's Isolated Wetlands Law.<sup>15</sup> In this case, the Applicant is planning to purchase 7.098 acres of wetland mitigation and 2,471 linear feet of stream mitigation credits in the *Upper White service area*.<sup>16</sup>

The ILF program allows for wetlands to be lost now with the goal of mitigating them later. According to the most recent program report, credit sales have exceeded what the DNR anticipated, *especially in central Indiana and the Upper White service area*.<sup>17</sup> Additionally, the report notes that “the credit sales *in the Upper White are outpacing any sponsor's ability to fulfill these credits quickly enough by implementing mitigation projects in the service area*.”<sup>18</sup> Essentially, credit sales are “outpacing [the ability] to...[implement] mitigation projects in the [Upper White] service area,” something that the *DNR did not anticipate*.<sup>19</sup> This raises the very real concern that wetlands are being lost, their mitigation is becoming backlogged, and the agency is not adequately prepared to remediate this issue because this outcome was not anticipated. This is problematic because Indiana has already lost 85 percent of our wetlands and, if development trends continue, there may not be places to mitigate wetlands in the Upper White service area.

The Indiana Wetland Task Force, created when the legislature passed SEA 389, released a report which states that implementing the ILF mitigation projects with the three-year time frame is a “challenge,” and that wetlands and streams are being lost “without a timely replacement of the functions and values to the watershed as required.”<sup>20</sup> It then goes on to state that “we need to stop the loss of existing wetlands while restoring or replacing wetlands on the landscape through both regulatory and non-regulatory approaches and incentives.”<sup>21</sup> Lastly, the report makes clear that “Indiana is at a point where *the cumulative loss of wetlands is having a measurable negative impact on residents, particularly from a water quality standpoint*.”<sup>22</sup> It is clear that, at this time, Indiana's wetland mitigation program is not effectively replacing wetlands needed to offset wetland losses and should therefore be utilized as a last resort.

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<sup>15</sup> Page 1, IN SWMP 2021 Annual Report, accessible at <https://www.in.gov/dnr/land-acquisition/files/la-2021-INSWMP-AnnualReport.pdf>.

<sup>16</sup> Public Notice of the Isolated Wetland Permit Application, IDEM ID # 2023-28-49-WLR-X.

<sup>17</sup> Page 8, IN SWMP 2021 Annual Report.

<sup>18</sup> Page 8, IN SWMP 2021 Annual Report.

<sup>19</sup> Page 8, IN SWMP 2021 Annual Report.

<sup>20</sup> Page 3, Indiana Wetlands Task Force Final Report, accessible at <https://www.hecweb.org/wp-content/uploads/2022/09/Final-Wetlands-Task-Force-Report-9.26.pdf>.

<sup>21</sup> Page 3, Indiana Wetlands Task Force Final Report.

<sup>22</sup> Page 4, Indiana Wetlands Task Force Final Report.

## Conclusion

Indiana's Isolated Wetlands Law is intended to allow development while protecting water quality. HEC shares this goal of wanting to protect Indiana's water quality. This Permit will impact headwater wetlands and streams within the White River watershed, where a portion of our program work is focused. This program work aims to track developments to protect environmentally sensitive areas such as wetlands and streams. HEC does not intend to prevent development, rather, we work to encourage responsible and sustainable development.

The alternative analysis submitted by the Applicant is insufficient under IC 13-18-22 because the Applicant failed to demonstrate that wetland activity is without reasonable alternative. In addition, the Applicant failed to thoughtfully consider the practical alternative of avoiding the headwater wetlands and streams completely and utilizing them for stormwater management. Lastly, Indiana's wetland mitigation program is not effectively replacing wetlands needed to offset wetland losses, therefore, this option should be utilized as the last resort. For these reasons, HEC respectfully requests that the Applicant submit an appropriate alternative analysis so that Indiana's waterways are being protected to the upmost extent.

Thank you for considering HEC's concerns, and we look forward to your response.

With Regards,

*Susie McGovern*

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